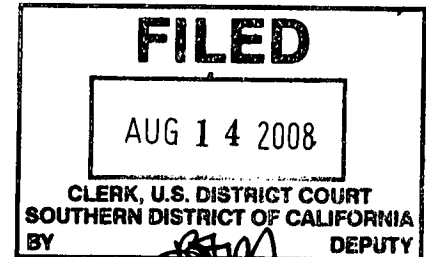


ORIGINAL

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7
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9



10 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)	Criminal Case No. <u>08 MJ 8605</u>
12 Plaintiff,)	<u>08cr02538 JAH</u>
13 v.)	<u>PLEA AGREEMENT</u>
14 SERVANDO DAVID LOZOYA-VAL,)	(Fast-Track)
15 Defendant.)	
16)	

17 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
18 AMERICA, through its counsel, Karen P. Hewitt, United States Attorney,
19 and Caleb E. Mason, Assistant United States Attorney, and defendant,
20 SERVANDO DAVID LOZOYA-VAL, with the advice and consent of
21 Daniel M. Davis, counsel for defendant, as follows:

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28 CEM:es:7/29/08

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I

THE PLEA

A. The Charge. Defendant agrees to waive Indictment and plead guilty to a single-count Information charging defendant with:

knowingly and intentionally importing 5 kilograms or more, to wit: approximately 22.70 kilograms (49.94 pounds) of Cocaine, a Schedule II Controlled Substance, into the United States from a place outside thereof, on or about July 5, 2008, within the Southern District of California, in violation of 21 U.S.C. §§ 952 and 960.

B. Early Disposition (Fast-Track) Program. The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Southern District of California.

C. Program Requirements. As part of this plea agreement, and as set forth in Section X.A.6. below, the United States will move the Court to depart downward two offense levels under USSG § 5K3.1 provided defendant complies with the following early disposition (Fast-Track) program requirements, to which defendant specifically agrees: (1) waives indictment, (2) files or argues no substantive motions, including those described in Fed. R. Crim. P. 12, (3) pleads guilty within 60 days of arraignment on the complaint initially filed against defendant ("arraignment"), (4) if defendant is illegally in the United States, stipulates to removal after completion of the sentence, and (5) waives appeal and collateral attack of the conviction and sentence (see Section XI below).

D. Timeliness/Offer Revocation. The disposition contemplated by this agreement is conditioned on (1) the original plea agreement being signed by defendant and defense counsel and returned to

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1 Government counsel not later than five business days before the
2 disposition date, and (2) the guilty plea being entered on or before
3 **September 5, 2008**. Further, in the event that defendant seeks a delay
4 in the disposition in this case to a date beyond 60 days of
5 arraignment, the United States may in its sole discretion revoke the
6 disposition offer contained in this plea agreement and seek
7 defendant's indictment on the underlying charge(s).

8 E. Forfeiture. The defendant further agrees to the
9 administrative and/or civil forfeiture of all properties seized in
10 connection with this case which the defendant agrees are subject to
11 forfeiture to the United States pursuant to Title 21, United States
12 Code, Section 881. The defendant further waives his right to receive
13 timely notice of administrative forfeiture as set forth in 18 U.S.C.
14 § 983(a) and waives receipt of all notice of forfeiture in this and
15 all other administrative and civil proceedings. Defendant warrants
16 and represents as a material fact that all property in which he has
17 any interest may be forfeited as described above.

18 II

19 NATURE OF THE OFFENSE

20 A. ELEMENTS EXPLAINED

21 Defendant understands that the offense to which defendant is
22 pleading guilty has the following elements:

- 23 1. Defendant intentionally brought Cocaine into the
24 United States; and
25 2. Defendant knew that it was Cocaine or some other
prohibited drug.

26 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

27 Defendant has fully discussed the facts of this case with defense
28 counsel. Defendant has committed each of the elements of the crime,

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1 and admits that there is a factual basis for this guilty plea. The
2 following facts are true and undisputed:

- 3 1. That on or about July 5, 2008, defendant knowingly and
4 intentionally drove a 2003 Dodge Ram 2500 truck ("the
5 vehicle"), bearing Baja California, Mexico license AM-
6 22-630, from Mexico into the United States through the
7 Calexico, California West Port of Entry (POE).
8
9 2. That at the time the vehicle described above entered
10 the United States through the Calexico, West POE,
11 concealed within the vehicle was approximately 22.70
12 kilograms (49.94 pounds) of Cocaine, a Schedule II
13 Controlled Substance.
14
15 3. That at the time defendant knowingly and intentionally
16 drove the vehicle described above into the United
17 States through the Calexico, West POE, he knew that
18 the vehicle contained approximately 22.70 kilograms
19 (49.94 pounds) of Cocaine, or some other prohibited
20 drug.

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III

PENALTIES

Defendant understands that the crime to which defendant is
pleading guilty carries the following penalties:

- A. a maximum life in prison; and a mandatory minimum of 10
years;
B. a maximum \$4,000,000 fine;
C. a mandatory special assessment of \$100.00 per count; and
D. a term of supervised release of at least 5 years but no
more than 5 years. Defendant understands that failure to
comply with any of the conditions of supervised release may
result in revocation of supervised release, requiring
defendant to serve in prison all or part of the term of
supervised release.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that this guilty plea waives the right to:

- A. continue to plead not guilty and require the Government to
prove the elements of the crime beyond a reasonable doubt;

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- 1 B. a speedy and public trial by jury;
2 C. the assistance of counsel at all stages of trial;
3 D. confront and cross-examine adverse witnesses;
4 E. present evidence and to have witnesses testify on behalf of
5 defendant; and
6 F. not testify or have any adverse inferences drawn from the
7 failure to testify.

8 V

9 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE
10 PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

11 The Government represents that any information establishing the
12 factual innocence of defendant known to the undersigned prosecutor in
13 this case has been turned over to defendant. The Government will
14 continue to provide such information establishing the factual
15 innocence of defendant.

16 Defendant understands that if this case proceeded to trial, the
17 Government would be required to provide impeachment information
18 relating to any informants or other witnesses. In addition, if
19 defendant raised an affirmative defense, the Government would be
20 required to provide information in its possession that supports such
21 a defense. Defendant acknowledges, however, that by pleading guilty
22 defendant will not be provided this information, if any, and
23 Defendant also waives the right to this information. Finally,
24 defendant agrees not to attempt to withdraw the guilty plea or to file
25 a collateral attack based on the existence of this information.

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VI

**DEFENDANT'S REPRESENTATION THAT GUILTY
PLEA IS KNOWING AND VOLUNTARY**

Defendant represents that:

- A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel, and has a clear understanding of the charges and the consequences of this plea;
- B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this agreement or otherwise disclosed to the court;
- C. No one has threatened defendant or defendant's family to induce this guilty plea; and
- D. Defendant is pleading guilty because in truth and in fact defendant is guilty and for no other reason.

VII

**AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF CALIFORNIA**

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities, although the Government will bring this plea agreement to the attention of other authorities if requested by the defendant.

VIII

APPLICABILITY OF SENTENCING GUIDELINES

Defendant understands the sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with

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1 defense counsel and understands that the Guidelines are only advisory,
2 not mandatory, and the court may impose a sentence more severe or less
3 severe than otherwise applicable under the Guidelines, up to the
4 maximum in the statute of conviction. Defendant understands further
5 that the sentence cannot be determined until a presentence report has
6 been prepared by the U.S. Probation Office and defense counsel and the
7 Government have had an opportunity to review and challenge the
8 presentence report. Nothing in this plea agreement shall be construed
9 as limiting the Government's duty to provide complete and accurate
10 facts to the district court and the U.S. Probation Office.

11 **IX**

12 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

13 This plea agreement is made pursuant to Federal Rule of Criminal
14 Procedure 11(c)(1)(B). Defendant understands that the sentence is
15 within the sole discretion of the sentencing judge. The Government
16 has not made and will not make any representation as to what sentence
17 defendant will receive. Defendant understands that the sentencing
18 judge may impose the maximum sentence provided by statute, and is also
19 aware that any estimate of the probable sentence by defense counsel
20 is a prediction, not a promise, and is not binding on the Court.
21 Likewise, the recommendation made by the Government is not binding on
22 the Court, and it is uncertain at this time what defendant's sentence
23 will be. Defendant also has been advised and understands that if the
24 sentencing judge does not follow any of the parties' sentencing
25 recommendations, defendant nevertheless has no right to withdraw the
26 plea.

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X

PARTIES' SENTENCING RECOMMENDATIONS

A. SENTENCING GUIDELINE CALCULATIONS

Although the parties understand that the Guidelines are only advisory and just one of the factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments and Departures (if applicable):

1. Base Offense Level [§ 2D1.1]	34
2. Base Offense Level [§ 2D1.1 (a)(3)] (Provided the defendant receives an adjustment for role, under § 3B1.2)	31
3. Safety Valve (if applicable) [§§ 2D1.1(b)(11) and 5C1.2]	-2*
4. Minor Role [§ 3B1.2(b)]	-2
5. Acceptance of Responsibility [§ 3E1.1]	-3
6. Departure for Fast Track [§ 5K3.1]	-2
Total Offense Level	22

*If defendant truthfully discloses to the government all information and evidence the defendant has concerning the offense and relevant conduct, and if defendant otherwise qualifies for the "safety valve" in § 5C1.2, the government will recommend a two-level reduction under § 2D1.1(b)(11), and relief from any statutory mandatory minimum sentence pursuant to § 5C1.2. Defendant understands that if he does not qualify for § 5C1.2, defendant may be subject to a statutory mandatory minimum sentence.

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1 B. ACCEPTANCE OF RESPONSIBILITY

2 Notwithstanding paragraph A.5 above, the Government will not
3 recommend any adjustment for Acceptance of Responsibility if
4 defendant:

- 5 1. Fails to admit a complete factual basis for the plea
6 at the time it is entered, or
- 7 2. Denies involvement in the offense, gives conflicting
8 statements about that involvement, or is untruthful
9 with the Court or probation officer, or
- 10 3. Fails to appear in court, or
- 11 4. Engages in additional criminal conduct, or
- 12 5. Attempts to withdraw the plea, or
- 13 6. Refuses to abide by any lawful court order.
- 14 7. Contests or assists any third party in contesting the
forfeiture of property(ies) seized or forfeited in
connection with this case.

15 C. ADJUSTMENTS

16 The parties agree that defendant may request additional downward
17 adjustments and that the Government will oppose any downward
18 adjustment not set forth in Section X, paragraph A above.

19 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

20 The parties have no agreement as to defendant's Criminal History
21 Category.

22 E. DEPARTURES

23 The parties agree that defendant may request additional downward
24 departures, including criminal history departures under USSG § 4A1.3.;
25 however, defendant may not file or argue substantive motions,
26 including those described in Fed. R. Crim. P. 12, under this
27 subsection. The parties agree further that the Government will oppose
28 any downward departure not set forth in Section X, paragraph A above.

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1 F. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

2 The parties agree that the facts in the "factual basis" paragraph
3 of this agreement are true, and may be considered as "relevant
4 conduct" under USSG § 1B1.3 and as the nature and circumstances of the
5 offense under 18 U.S.C. § 3553(a)(1).

6 G. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

7 The parties agree that the Government will recommend that
8 defendant be sentenced to the low end of the advisory guideline range
9 as calculated by the Government pursuant to this agreement. However,
10 if the Court adopts an offense level or downward adjustment or
11 departure below the Government's recommendations in this plea
12 agreement, the Government will recommend a sentence as near as
13 possible to what the sentence would have been if the Government's
14 recommendations had been followed.

15 H. SPECIAL ASSESSMENT

16 The parties will jointly recommend that defendant pay a special
17 assessment in the amount of \$100.00 to be paid forthwith at time of
18 sentencing. The special assessment shall be paid through the office
19 of the Clerk of the District Court by bank or cashier's check or money
20 order made payable to the "Clerk, United States District Court."

21 I. STIPULATED REMOVAL

22 If defendant is not a United States citizen or national, either
23 before or immediately following sentencing, defendant agrees to an
24 order of removal from the United States entered by Executive Office
25 for Immigration Review or authorized Department of Homeland Security
26 official. Defendant understands that defendant will not be removed
27 until defendant has served any criminal sentence imposed in this or
28

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1 any other case. Defendant further waives any right to appeal, reopen
2 or challenge the removal order.

3 XI

4 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

5 In exchange for the Government's concessions in this plea
6 agreement, defendant waives, to the full extent of the law, any right
7 to appeal or to collaterally attack the conviction and sentence,
8 including any restitution order, unless the Court imposes a custodial
9 sentence above the greater of the high end of the guideline range
10 recommended by the Government pursuant to this agreement at the time
11 of sentencing or statutory mandatory minimum term, if applicable. If
12 the custodial sentence is greater than the high end of that range, the
13 defendant may appeal, but the Government will be free to support on
14 appeal the sentence actually imposed. If defendant believes the
15 Government's recommendation is not in accord with this agreement,
16 defendant will object at the time of sentencing; otherwise the
17 objection will be deemed waived.

18 If defendant breaches this plea agreement, at any time, by
19 appealing or collaterally attacking the conviction or sentence, in any
20 way, the Government may prosecute defendant for any counts, including
21 those with mandatory minimum sentences, dismissed or not charged
22 pursuant to this plea agreement. Additionally, the Government may use
23 any factual admissions made by defendant pursuant to this plea
24 agreement in any such prosecution.

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1 language). Defendant has discussed the terms of this agreement with
2 defense counsel and fully understands its meaning and effect.

3 XVI

4 DEPENDANT SATISFIED WITH COUNSEL

5 Defendant has consulted with counsel and is satisfied with
6 counsel's representation.

7 KAREN P. HEWITT
8 United States Attorney

9 8/4/08
10 DATED

Caleb E. Mason
11 CALEB E. MASON
12 Assistant U.S. Attorney

13 7/31/08
14 DATED

Daniel M. Davis
15 DANIEL M. DAVIS
16 Defense Counsel

17 IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR
18 UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS"
19 PARAGRAPH ABOVE ARE TRUE.

20 7/31/08
21 DATED

Servando David Lozoya Val
22 SERVANDO DAVID LOZOYA-VAL
23 Defendant

24 Plea agreement translated to defendant
25 by Matt Mendenhall, Certified Court interpreter,
26 July 31, 2008 Matt Mendenhall
27
28